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February 17, 2005

Via Electronic Submission

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW – Lobby Level
Washington, D.C. 20554

Re: ***Notice of Ex Parte – Level 3 Communications LLC Petition for Forbearance Under 47 U.S.C. § 160(c) from Enforcement of 47 U.S.C. § 251(g), Rule 51.701(b)(1), and Rule 69.5(b), WC Docket No. 03-266.***

Dear Ms. Dortch:

On behalf of SBC Communications, Inc., James C. Smith, Eric Einhorn and the undersigned met with Jeff Dygert, Linda Kinney, and Russ Hanser of the Office of General Counsel, and Jennifer McKee of the Wireline Competition Bureau, on February 16, 2005, to discuss the above-referenced petition filed by Level 3 Communications LLC (Level 3). During the course of the meeting, we explained that IP-PSTN traffic is subject to access charges under the Commission's existing rules and the so-called enhanced service provider (ESP) exemption does not apply to such traffic, per the attached slides. We also explained that the asymmetrical compensation regime proposed by Level 3 would disrupt the Commission's efforts to achieve holistic intercarrier compensation reform, would jeopardize affordable, universal access to telephone service, and would create an arbitrary regulatory advantage for VoIP providers and their CLEC partners at the expense of traditional local telephone companies, long distance providers and wireless providers. We further explained that the relief requested by Level 3 presents serious implementation problems concerning the routing and rating of traffic.

In addition, we discussed how exempting VoIP providers and their CLEC partners from paying access charges on IP-PSTN traffic, while traditional long distance and wireless providers are still required to pay those charges, would be a form of unreasonable discrimination and an example of arbitrary and capricious decisionmaking. Specifically, we explained that when a VoIP-originated call is handed off to the PSTN in circuit-switched format, the PSTN is being used in the same way as when a traditional long distance or wireless call is handed off to the PSTN. We further explained that the called party on a VoIP-to-PSTN call (the PSTN subscriber) is receiving a telecommunications service just like the called party on a traditional long distance or wireless call.¹ Indeed, the called party would have no reason to know that he or she was receiving a VoIP-originated call.

¹ See *Southwestern Bell Telephone Co. v. FCC*, 153 F.3d 523, 542 (1998). In *Southwestern Bell*, the court observed that the ESP exemption had been justified on the grounds that ESPs "do not utilize LEC services and facilities in the same way or for the same purposes as other customers who are assessed per-minute interstate access charges." *Id.* at

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For all of these reasons, we urged the Commission to deny Level 3's petition and to instead proceed expeditiously with comprehensive intercarrier compensation reform. All of the matters discussed during the meeting were consistent with our previous filings in this docket.

Pursuant to section 1.1206 of the Commission's rules, this letter is being filed electronically with the Commission.

Sincerely,

/s/ Jack Zinman

Attachments

cc: Jeff Dygert
Linda Kinney
Russ Hanser
Jennifer McKee

542. With the VoIP-to-PSTN calls at issue here, however, the PSTN is being used in the same manner as with a traditional long distance or wireless call. *See Id.* n.9.

Attachment 1

SBC Presentation
WC Docket No. 03-266
February 16, 2005



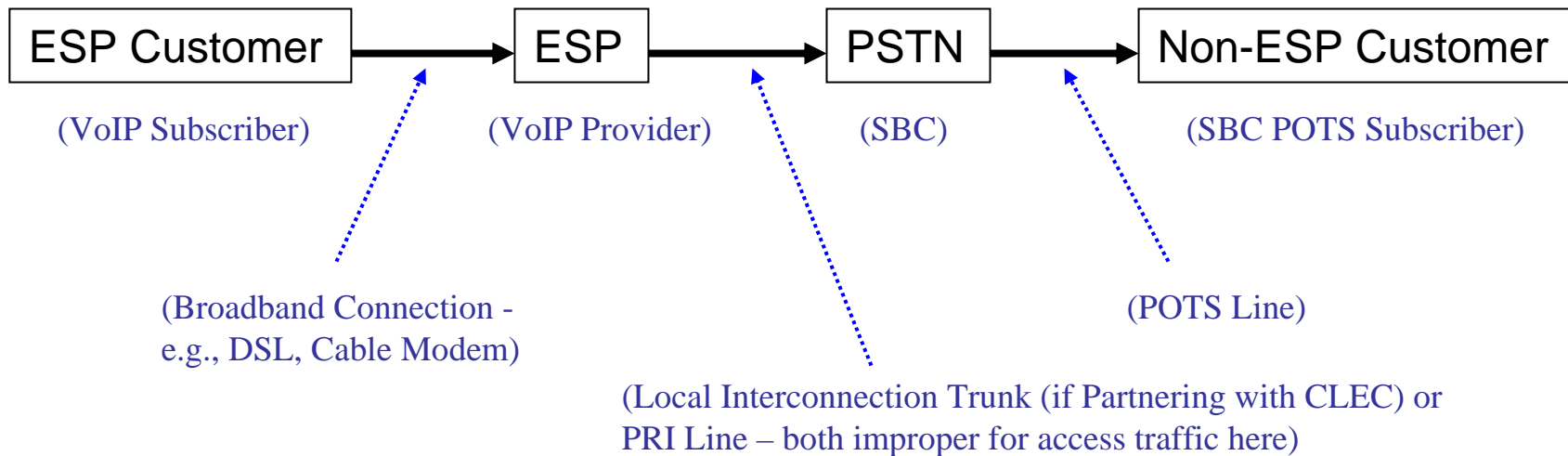
The ESP Exemption is Limited

- Applies when ESP uses PSTN to reach its **own customer** who receives an **information service**



The ESP Exemption is Limited

- Does NOT apply when ESP uses PSTN to reach **non-ESP customer** who receives **telecom service**



Attachment 2

IP-PSTN Call Flows

